

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

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BEFORE THE LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

**NUMBER: 12-A-020
IN THE MATTER OF:**

**ROBERT JARRETT KADISH, D.P.M.
(Certificate No. PD183R)**

**ADMINISTRATIVE HEARING
HELD ON MAY 20, 2014**

DECISION AND ORDER

This matter comes before the Board pursuant to an Administrative Complaint, which charges Respondent Robert Jarrett Kadish, DPM, with a number of violations of the Podiatry Practice Act, R. S. 37:611 et seq. The matter was heard before a panel consisting of Drs. Amusa, Farris, Valentine,, with Dr. Dawson, presiding. The Respondent was present and represented by Frank Beahm, Esq., as well as the Complainant.

In the Administrative Complaint, Respondent is charged with violation of R. S. 37:624A(25), which proscribes "soliciting, accepting, or receiving anything of economic value in return for and based on the referral of patients to another person, firm, or corporation."

Respondent is further charged with violation of R. S. 37:624A(19) and (20), which proscribe unprofessional conduct, and continuing or recurring podiatric practice which fails to satisfy the prevailing and usually accepted standards of podiatric practice in this state.

Finally, he is charged with violation of R. S. 37:624A(24), which proscribes knowingly performing any act which, in any way, assists an unqualified person practice podiatry, or having professional connection with, or lending one's name to an illegal practitioner.

All of the above charges arise out of one transaction. Dr. Kadish entered into a contract with a firm which provided portable electrodiagnostic equipment, and the operators thereof. If Dr. Kadish ordered such testing, the firm would bring its equipment to Dr. Kadish's office, where it rented space from him. The testing would be carried out, in the leased space, by the equipment operators furnished by the firm. The test results would be submitted to a qualified physician for interpretation. The physician would interpret the data, and furnish a report to Dr. Kadish, which would contain a diagnosis, and recommendations for treatment.

The firm would pay rent to Dr. Kadish for the areas which it leased in his office. In addition, Dr. Kadish would be paid \$150.00 for each hour the testing was conducted in his office. Under the contract, the payment was for the following services:

1. Schedule patients to receive the testing.
2. Provide, before testing, "a historical and clinical summary of the patient's present and past illness, and other relevant facts that affect the nature and quality of the testing.
3. Be available for questions from the patient and the testing personnel, for rendering opinions "related to the provision of the Diagnostics in progress or the necessity of such Diagnostics" and generally to provide supervision for the testing personnel.
4. Review the records created during the testing "to evaluate pertinent findings and indications for additional or revised testing procedures."
5. Conduct an ongoing process of quality assurance through review of Diagnostics follow-up data.
6. Provide such other related duties related to the Diagnostics as are reasonably requested from time to time.

Billing would be handled by the testing firm, which would remit to Respondent the amounts due for rental and for his other services.

Dr. Kadish testified that he knew nothing about electrodynamic testing, and that he was not trained in any aspect of that discipline. He therefore did not, and was not qualified to, perform any of the services detailed under paragraphs 3, 4, and 5 above. He testified that the tests

administered in his office were designed by someone other than himself, and that he gave no instructions to any of the testing personnel at any time.

In the record are the charts of ten of Respondent's patients. Each of these files contains a form labeled "Patient Intake/Order Details." Each form is filled out and signed by the testing technician. Dr. Kadish's signature, over the designation of "Referring/Ordering Physician Signature," appears in the lower left corner of each form. Just over his signature appears the time spent on that particular test. On each of these forms the technician has written: "Dr. Kadish ordered the following CPT Codes" or something similar.

Dr. Kadish admitted that the signatures were his, but said that he signed only to confirm the time spent on each test, and that the language indicating that he had ordered the test codes is not true, and was not on the form when he signed it. He testified that when he learned that the above language appeared on the forms, he called and had the practice changed. He offered in evidence subsequent forms showing that another physician is designated as the ordering physician. That physician testified the he designed each of the tests, and that he interpreted them after they were done. He also testified that he wrote a report containing his diagnoses and recommendations for treatment.

It is the position of Complainant that Dr. Kadish's signature on a form which states that he ordered the testing protocol is sufficient, particularly in the light of the contract which requires such services from him, to establish that he was practicing beyond the scope of his training, and was assisting an unqualified person in the practice of podiatry.

We cannot agree. We believe Dr. Kadish's testimony that he had nothing to do with the testing other than to order and schedule the tests, and to furnish a form giving data about the patient. Since he did not attempt to practice in the area of electrodynamic testing, he therefore cannot be guilty of violating R.S. 37:624A(20) and (24).

Respondent is further charged with receiving something of financial value in exchange for a referral for services, and with unprofessional conduct resulting therefrom. It is unquestioned

that Dr. Kadish was paid \$20.00 per day for the space used by the testing personnel when they were on his premises. No question is raised as to the propriety of this payment. He was also paid at the rate of \$150.00 per hour for the time that the testing was conducted in his office. The contract, which is quoted above, sets forth the services which are to be furnished by Respondent. We have already noted that Respondent is not qualified to, and in fact did not, perform the majority of the designated services. It is argued, on Respondent's behalf, that his presence in the office to furnish advice relative to his patients' condition, should the need arise, is sufficient to meet the requirements of the contract.

Dr. Kadish testified that he thought it would be more convenient for his patients who needed this sort of diagnostic testing to get the tests in his office, rather than suffer the delays inherent in going to another office for the tests. He testified that he relied on legal advice that the proposed arrangement was appropriate, and that he continued to do business under the contract even after it was questioned by the Complainant. The legal advice on which Respondent relied was a letter from the testing firm's counsel to the testing firm, advising them that their contract for personal services was sufficient to qualify for a safe haven, and therefore exempt from the Federal anti kickback law. However, this question is not before us today.

If Respondent had been qualified to carry out all of the duties imposed on him by the contract, then we believe that the scheme might have succeeded, since those duties might have justified remuneration at \$150.00 per hour. However, Dr. Kadish himself testified that he was not qualified to carry them out, and never attempted to do so. All he did to satisfy the requirements of the contract was to be on the premises. He is presumed to be aware of the provisions of the contract since he signed it. He is therefore presumed to know that he was not carrying out the duties imposed on him by the contract.

All he did was provide a history and summary of the patient's condition; state why he thought electrodynamic testing was appropriate; and schedule the test, all of which he would have done in any event. Respondent is presumed to know that he was not fully complying with the terms of the contract. We think the whole scheme is a thinly disguised kickback, and that Dr.

Kadish is guilty of receiving payment in exchange for his referral for testing, whether he thought it was legal or not.

We therefore find Dr. Kadish of violating R. S. 37:624A(25), and of violating R. S. 37:624A(19) for unprofessional conduct.

In view of the foregoing findings, the following sanctions are imposed:

First, Dr. Kadish shall pay a fine of \$5000.00, and all costs of this proceeding. Said payment shall be made within ninety days of the date of this opinion.

Second, Dr. Kadish shall successfully complete a Board approved course of no less than 20 hours addressing professionalism and medical ethics within one (1) year of the effective date of this order.

Thirdly, the license of Dr. Kadish to practice podiatry in this state, as evidenced by Certificate No. PD183R, shall be placed on **PROBATION** for a period of five years under the following terms and conditions:

- 1) **Cooperation with the Board's Probation and Compliance Officer.** The Probationer is required to report, in person to his/her probation officer, within thirty (30) days of receipt of notification that the opinion of the Board is final and executory, and at such other times as may be directed during the probationary period. The Probationer is required immediately to complete all forms, fully and carefully, when received, and to present these to his/her probation officer at the first meeting or as directed. Probationer shall immediately thereafter, notify the Board's Probation and Compliance Officer of any changes in his/her current home and professional addresses and telephone numbers, and shall allow such access to his/her office, business practice or home and to patient medical records as may be necessary to his/her supervision. The Probationer is required to cooperate fully with the probation officer on all matters relating to assuring compliance with the general and special terms of probation imposed by this Board Order.
- 2) **Continuing Medical Education.** Probationer shall obtain not less than fifty (50) credit hours per year for each of the years of the probationary term through attendance at and participation in continuing medical education ("CME") programs accredited by the American Medical Association. On or before the anniversary date of the effective

date of this Order and for each additional year of the probationary term, probationer shall cause to be submitted to the Board written certification of the CME programs and credits completed during the preceding twelve (12) months.

- 3) **Probation Monitoring Fee.** For each year of the probationary term probationer shall pay the Board a probation monitoring fee of Three Hundred (\$300.00) Dollars. Payment of the initial fee shall be due not later than sixty (60) days from the effective date of this Order. All subsequent annual payments shall be due on or before the anniversary date of the initial fee payment.
- 4) **Absence from State or Discontinuance of Practice - Effect on.** Should probationer at any time during the period of probation ordered herein be absent from the state of Louisiana, relocate to and/or take up residency in another state or country, or discontinue practicing as a physician, for a period of thirty (30) days or more, he/she will so advise the Board in writing. In such instance, the probationary period ordered herein shall be deemed interrupted and extended for no less than the period of time during which he/she was not engaged in practice or was absent from the state of Louisiana; however, all terms and conditions may continue to be in effect as ordered or may be modified or altered as needed in the Board's discretion.
- 5) **Certification of Compliance with Probationary Terms/Personal Appearance before the Board.** At least sixty (60) days prior to the conclusion of the probationary term imposed herein, probationer shall contact the Board and arrange for a personal appearance before the Board, or a committee that may be designated by the Board, as its meeting preceding the expiration of the probationary term ordered herein. As a precondition to his/her request for termination of probation, probationer shall provide the Board with an executed affidavit certifying that he/she has complied with each of the terms of probation imposed upon him/her by this Order. The probationary period and all of its terms and conditions shall be, and shall be deemed to be, extended and continued in full force and effect pending probationer's compliance with the requirements of this provision.

IT IS FURTHER ORDERED that any violation or failure of strict compliance with any of the terms, conditions or restrictions set forth by this Order by Robert Jarrett Kadish, DPM shall be deemed adequate and sufficient cause, upon proof of such violation or failure, for the revocation and cancellation of Dr. Kadish's license to practice medicine in the state of Louisiana or for such other action as the Board may deem appropriate, as if such violations were enumerated among the causes provided in La. Rev. Stat. §37:624A.

NEW ORLEANS, LA, this 18th day of August, 2014.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

BY: Mark Dawson MD
MARK H. DAWSON, M.D.
President